In the

United States Court of Appeals

For the Ninth Circuit

No. 11952

WAIALUA AGRICULTURAL COMPANY, LIMITED,
A CORPORATION,
Appellant,

vs.

CIRACO MANEJA, ET AL.,
Appellees,

and

CIRACO MANEJA, ET AL.,
Appellants,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
A CORPORATION,
Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF HAWAII.

BRIEF FOR AMERICAN FARM BUREAU FEDERATION AS AMICUS CURIAE.

DONALD KIRKPATRICK,
General Counsel, American Farm Bureau Federation,
109 N. Wabash Ave.,
Chicago 2, Ill.

Of Counsel:
PAUL E. MATHIAS,
HARRY MELOY,
GEORGE E. MERKER, JR.,
43 East Ohio St.,
Chicago 11, Ill.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

INDEX.

Citations.

Cases.

Statutes.

Miscellaneous.

In the

United States Court of Appeals

FOR THE NINTH CIRCUIT.

No. 11952

WAIALUA AGRICULTURAL COMPANY, LIMITED,
A CORPORATION,
Appellant,

vs.

CIRACO MANEJA, ET AL.,
Appellees,

and

CIRACO MANEJA, ET AL.,
Appellants,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
A CORPORATION,
Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF HAWAII.

BRIEF FOR AMERICAN FARM BUREAU FEDERATION AS AMICUS CURIAE.

STATEMENT.

On motion duly made, the American Farm Bureau Federation (hereinafter referred to as the Farm Bureau) was

granted leave by this court on November 4, 1948, to file a brief as *amicus curiae* herein.

The Farm Bureau is a nonprofit corporation organized under the laws of the State of Illinois. It is a general farm organization of more than 1,250,000 farm families in 45 states of the United States and Puerto Rico.* The objects of the Farm Bureau are to promote, protect and represent the business, economic, social and educational interests of the farmers of the United States, and generally to develop agriculture. It sought and secured permission to file a brief herein in order to show to this court that the decision below, if sustained, would deprive not only sugar plantations in Hawaii but all farmers in the United States of the agricultural exemption in the Fair Labor Standards Act with respect to many activities which clearly fall within the language and purpose of that exemption.

We shall not review the facts in this case since they have all been stipulated by the parties and are set forth in the brief filed with this court by the appellant, Waialua Agricultural Company, Limited.

As we read the decision (R. 410-437) and judgment (R. 440-445) below, it destroys for American agriculture the very broad and carefully drawn exemption for "agriculture" appearing in sections 13(a)(6) and 3(f) of the Fair Labor Standards Act (hereinafter called the Act). The decision seems to attempt some distinction between mechanized and non-mechanized farming operations and between large and small farming operations. The decision denies the agricultural exemption to the many activities involved in the case which are common everyday activities performed by most American farmers and farms. Such activities are: (1) the hauling by the farmer of the farm's products to a storage place or a processing plant located either on or off the farm or to any market; (2) the hauling of fertilizer,

* The Farm Bureau has never had any membership in Hawaii.

seed, other agricultural supplies, and agricultural equipment from one part of the farm to another; (3) the hauling by the farmer of necessary farm supplies and equipment from a nearby town to the farm; (4) the maintenance, repair and operation by the farmer of his trucks and other hauling facilities, including maintenance of field roads on the farm; (5) the repair and overhauling by the farmer or on the farm of farm machinery, equipment and implements; (6) the feeding and shoeing by the farmer or on the farm of horses and mules used on the farm; (7) the maintenance and repair by the farmer or on the farm of farm buildings and grounds and tools and implements used in the farm operation; and (8) the processing by farmers or on the farm of agricultural products grown on the farm preparatory to marketing.

We contend that the above enumerated activities fall squarely within the agricultural exemption provided by the Act. If the decision and judgment below holding otherwise are sustained, then all American agriculture, and not only sugar cane farming, will be substantially deprived of the exemption which the Act grants. We therefore pray that this court reverse the decision and judgment of the court below insofar as it denies exemption to the above enumerated activities.

We shall now show that the language of the exemption provision, its legislative history, the case law and the administrative interpretations of the Administrator of the Wage and Hour Division thereunder unassailably establish that such activities are exempt under section 13(a)(6) of the Act.

ARGUMENT.

EMPLOYEES ENGAGED IN THE AFOREMENTIONED ACTIVITIES ARE EMPLOYED IN "AGRICULTURE" WITHIN THE MEANING OF SECTION 3(f) AND ARE THEREFORE EXEMPT FROM THE WAGE AND HOUR PROVISIONS OF THE ACT AS PROVIDED BY SECTION 13(a)(6).

A. The exemption is not destroyed because farm operations may be mechanized.

As the courts have recognized, the Act in section 3(f) contains a very broad, comprehensive and far reaching definition of the term "agriculture". *Addison* v. *Holly Hill Fruit Products,* 322 U. S. 607, 612; *Damutz* v. *Pinchbeck,* 158 F. (2d) 882, 883 (C. C. A. 2); *McComb* v. *Farmers Reservoir Co.,* 167 F. (2d) 911, 914 (C. C. A. 10). The definition does not distinguish between farming operations that are mechanized and those that are not mechanized, and the courts in the cases above cited have refused to recognize any such distinction. See also *Miller Hatcheries* v. *Boyer,* 131 F. (2d) 283, 285 (C. C. A. 8). If an employee comes within the statutory definition, he is exempt without qualification, whether his operation is conducted by hand or by extremely complex machinery. For the past 35 years or more there have been great technological advances in American agriculture and the United States Department of Agriculture has encouraged such technological advances. These have taken place in the case of many varieties of farming. *Hopkins, Changing Technology and Employment in Agriculture* (U. S. Department of Agriculture, 1941) p. 53. For example, the labor required on an acre of wheat in 1934-36 was half the amount needed in 1909-13. *Technology on the Farm* (U. S. Department of Agriculture, 1940) p. 61. As part of this trend toward greater pro-

ductivity, each census since 1880, with few exceptions, has shown an increase in the average size of farms. The most noticeable increases were in the areas best suited to the use of power equipment. *U. S. Census of Agriculture* (1945) Pt. II, p. 65. Approximately as of the date of enactment of the Fair Labor Standards Act, about 10% of the nation's farms accounted for 54% of the farm produce and 68% of the cash farm wage bill in the United States. Supp. Rep. 1012, Pt. II, Committee on Education and Labor, 79th Cong. 1st Sess., p. 77. The record in the present case demonstrates how these technological advances have taken place in the case of appellant's sugar plantation (R. 215-217).

When Congress enacted the Fair Labor Standards Act in 1938, it was presumably aware of these technological forward strides in agriculture. Had it intended to distinguish in the exemption for argiculture written into the Act between those farms which are not mechanized and those which are, it could quite easily have expressed such intent. It did not do so, but as we shall show, simply defined the term "agriculture" in functional terms. The court below, therefore, was completely in error in denying exemption to the agricultural activities of appellant on the ground that such activities are mechanized. Degree of mechanization is a factor of no relevance.

B. Section 3(f) was intended to exempt anything the farmer does in connection with growing and marketing his crop and in addition anything that is done on the farm in connection with growing and marketing the crops of that farm.

The definition starts with "farming in all its branches". It then proceeds to enumerate specific activities including preparation of the soil, growing of agricultural commodi-

ties, and harvesting of them. Finally the definition includes

> "any practices (including any forestry or lumbering operations) performed by a farmer *or* on a farm as an incident to *or* in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." (Emphasis supplied.)

Language could not be more clear to evince an intent to exempt all activities performed by the farmer or on the farm in connection with growing and marketing the farm's crops.

We consider briefly the terms "farm" and "farmer". Generally speaking the term "farm" means a tract of land or several tracts of land or fields owned or controlled by one or more persons and devoted to the production of agricultural products as a single enterprise under common management with common equipment and labor. Many farms consist of several and sometimes many separate tracts or fields. The operator of the farm has always been designated a "farmer." Most farmers are individuals. However, there are thousands of farming partnerships in the United States and in recent years it has been quite common for joint owners to incorporate rather than to operate as partners. All of such types of farmers are included within the membership of Farm Bureau.

Practically every farm in the United States, whether large or small, and whether it produces livestock, milk or grows grain, forage, crops, seed, cotton, fruits or vegetables, tobacco or any other agricultural commodity, engages in the activities which the court below held nonexempt. Almost all farmers, as part of their harvesting operations, haul their crops to a storage place or a processing plant located either on or off the farm or to some market. A great many of them conduct extensive process-

ing operations upon their own crops. For example, many friut and vegetable farmers pack and can their own fruits and vegetables; many cotton farmers gin their own cotton; and many dairy farmers process their own milk into butter and cheese. The apple farmer, for example, may haul his apples to a storage place on the farm or he may sort, wrap and pack the apples and otherwise prepare them for market or he may can the apples in one form or another, or he may haul them to a packing plant off the farm to which he sells them. The grain farmer may haul his grain to a storage place on his farm or to a nearby elevator to which he sells same; the dairy farmer may haul his milk to a bottling plant on his own farm or to a nearby bottling plant to which he sells same, or he may process the fluid milk into butter and cheese on his own farm and then transport the same to market; the cotton farmer may haul his cotton to a gin located on or off the farm, and so forth. Unquestionably, when so performed, these are operations performed by a farmer or on a farm as an incident to or in conjunction with farming operations; *Redlands Foothill Groves* v. *Jacobs,* 30 F. Supp. 995 (S. D. Calif. 1940); *Damutz* v. *Pinchbeck,* 159 F. (2d) 882. All farmers likewise haul agricultural supplies and equipment to the particular field or fields of the farm where such supplies and equipment are to be used; all of them go to town with their trucks or other vehicles to pick up supplies and equipment for use on the farm; all do some maintenance work to keep in good usable condition their trucks or other hauling facilities, including the field roads on the farm; all do some repair work on their agricultural equipment, machinery and implements; many feed and shoe their horses and mules; and all do some maintenance and repair work on the farm buildings and grounds, and with tools and implements used in the farming operation. Without some or all of these various activities, no farm could grow

or produce anything. Thus the decision below, if sustained, would apply to all farming and would effectively destroy the agricultural exemption for all farms and not only for the Hawaiian sugar plantations.

Furthermore, with respect to the various hauling activities, no distinction can be drawn on the basis of the medium used for such hauling. In some cases as in the case before the court here, the medium used for bringing in the sugar crops to the mill is a narrow gauge railroad, although it appears from a recent Government report that many other methods of transportation are used on Hawaiian sugar plantations with a general trend toward large motor trucks. *The Economy of Hawaii in 1947*, Bureau of Labor Statistics, U. S. Department of Labor, Bulletin No. 926, p. 45. In the case of a small cotton or tobacco farmer, he may haul his cotton to the cotton gin or his tobacco to a tobacco stemmery by horse-drawn vehicle. In the case of a dairy farmer or a fruit farmer, he may haul his milk or fruit to a bottling plant or to a packing establishment by large truck. In many instances such trucks will be 10-ton or larger in size. We note that in the case at bar the rail cars on the narrow gauge railroad averaged only 4 and 3/4 tons per car gross cane (R. 157). We cannot conceive of any basis upon which the type of vehicle used in the hauling could make any difference in the application of the exemption. As an economic matter the farmer, consistent with his means, will use that mode of transportation best suited for his type of farming. In all cases, however, whatever the medium used, the hauling is simply an inseparable part of the farmer's operations of growing agricultural commodities, harvesting them and marketing them.

It is perfectly plain then that the statutory definition of agriculture when it refers to "farming in all its branches", "harvesting" and "practices . . . performed by a farmer

or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market", includes the activities listed *supra,* pp. 2, 3.

C. The legislative history of sections 13(a)(6) and 3(f) confirms that all the activities here described were intended to be exempt.

As the bill which finally became the Fair Labor Standards Act worked its way through the legislative mill to final passage, repeated assurances were given that a full exemption had been accorded to all activities performed by the farmer or on the farm in connection with the growing and marketing of the farm's crops. All agreed that the agricultural exemption was to be plenary and that all agriculture without exception was excluded from the coverage of the Act. It is obvious from the legislative history that the bill never would have become law but for such assurances and the consequent feeling on the part of the legislators that *all* agriculture was in fact exempt. 83 Cong. Rec. 7393, 9257.*

The bill (S. 2475) was introduced in the Senate on May 24, 1937 and was referred to the Senate Committee on Education and Labor, which wrote into the bill a broad definition of "agriculture" and then reported it to the Senate. *S. 2475, as reported in the Senate, July 6, 1937,* Sec. 2, pp. 50-51. Senator Black, Chairman of the Senate Committee in charge of the bill, stated to the Senate that the bill specifically excluded workers in agriculture of all kinds and of all types. 81 Cong. Rec. 7648. When he made this statement the agricultural definition in the bill, insofar as it related to practices incidental to farming

* We are not setting forth any part of the text of the debates as representative portions are contained in Appendix A of the Brief for Appellant (Pages 81 to 87, inclusive).

operations, limited the exemption to those practices "ordinarily" performed by a farmer as an incident to farming operations.

In various colloquies between Senator Black and other Senators, the former made it clear that the exemption applied to all the things the farmer did with reference to producing his crops and marketing them—whether the crops were cotton, fruits or vegetables, or any other commodity. 81 Cong. Rec. 7657, 7658, 7659. Senator McGill then proposed an amendment which was adopted with the approval of the Labor Committee, which amendment provided that the agricultural exemption should apply not only to practices ordinarily performed *by a farmer* as an incident to his farming operations, but also to practices ordinarily performed *on a farm* as an incident to such farming operations. His amendment further added to the exemption for agriculture the activity of "delivery to market". The purpose of the McGill amendment, as explained by its author, was to exempt *all* kinds of labor performed on a farm so long as it was "incidental to agricultural purposes" and was merely preparatory to the marketing of *any* field crop and *all* kinds of labor performed in connection with making delivery to market of agricultural products. The discussions on Senator McGill's amendment are abundantly clear that such amendment was intended to apply to any commodity produced on a farm—peanuts, fruits and vegetables, grain, sugar cane, etc. 81 Cong. Rec. 7888, 7927, 7928-7929.

The language added to the agricultural definition by Senator McGill's amendment remained in the bill and was ultimately part of the bill as enacted. No activities are more essentially "incidental to agricultural purposes" than those we are presently discussing. To deny exemption to them as the court below effectively did is to flaunt the clearly expressed legislative purpose.

When the bill as passed by the Senate went to the House of Representatives, the House Labor Committee rewrote the agricultural exemption and purposely struck the word "ordinarily" from that part of the definition relating to incidental practices. H. Rep. No. 1452, 75th Cong., 1st Sess. pp. 4-5, 11. And the word "ordinarily" never again reappeared in the definition. The bill as it was first reported by the House Labor Committee was recommitted to such Committee and on April 21, 1938, another draft of S. 2475 was reported to the House. As so reported, once again the definition of "agriculture" was broadened by adding to the incidental practices portion of the definition the activities of "preparation for market", "delivery to storage", and "delivery * * * to carriers for transportation to market". H. Rep. No. 2182, 75th Cong. 3rd Sess. p. 2. It was in this form that the bill was passed in the House.

If there had been any doubt theretofore that the hauling by a farmer of his crops to a storage place or to carriers to transport same to market was exempt, such doubt was completely eliminated by the addition of the foregoing phrases to the definition.

The two Houses of Congress then held a conference on the bill. In such conference they retained every amendment that had previously broadened the definition of "agriculture". But they went further. They broadened the exemption still more by exempting *all practices performed by a farmer or on a farm "in conjunction with such farming operations"*. 83 Cong. Rec. 9253-9254. This further broadening is additional confirmation that Congress intended to include in the exemption all of the activities we are discussing, since all of them are obviously performed by the farmer or on the farm *in conjunction with* the farming operations of growing crops. All of them are vital to the growing operation which could not otherwise take place.

When the conference report was debated in the Senate, Senator Thomas of Utah, who had succeeded Senator Black as Chairman of the Senate Committee on Education and Labor, and was chairman of the Senate conferees, stated that agriculture was exempted from the operation of the bill, that he did not know of any kind of agriculture that was included in the bill, and that the definition of agriculture was purposely made all-inclusive. 83 Cong. Rec. 9162-9163.

The legislative history will be searched in vain for any hint that Congress intended by the agricultural exemption to exempt only small farms doing their work with hand labor. On the contrary, there was discussion concerning many highly mechanized operations and it was made plain by the proponents of the legislation that such operations would be exempt if they came within the definition. 81 Cong. Rec. 7656, 7657, 7658, 7659. Farm operations, unlike industrial operations, cannot be regulated by the clock. The coming and going of the seasons do not await the pleasure of man. Sunshine, rain, humidity and warmth are not yet subject to man's control. The time to plant and the time to harvest are determined by the whims of nature. Plant and animal growth continues around the clock. Successful farming demands long hours of labor on certain days and little or no hours of labor on others. Frost, heat, humidity, rainfall, relative day and night temperature, presence or absence of pests are the practical factors governing these demands. No limitation or regulation of the farmer's hours is possible in an efficient farming operation. This is the underlying reason for the agricultural exemption. See the testimony of various witnesses at the Joint Hearings on S. 2475 and H.R. 7200 (the related House bill) held in June, 1937, Pt. 3, 81 Congressional Record, pp. 1007, 1083, 1120-1121, 1133-1134. Senator McAdoo speaking on the floor of the Senate in support of an amendment

to the definition of agriculture which would have exempted "any practices ordinarily performed by or for a farmer as an incident to such farming, including harvesting, packing, storing, or preparing for market, in the raw or natural state, any products derived from any of the above agricultural pursuits", stated the proposition thusly:

> "These agricultural commodities are highly perishable, and the work which must be done by the packing houses and on the farms varies greatly with temperature variations. Twenty-four hours in advance one cannot know whether the crop must be moved. So, to fix rigid hours of labor in such cases would be to ruin the producers, as the crop must be handled quickly with the workers available. The broadening of the definition as I have suggested is not only directly in line with the object of the bill but will also protect the farmers, who, in my State at least, are engaged in a method of marketing, packing, and handling their crops which may differ from the methods employed in other States." (81 Cong. Rec. 7927.)

Whether or not the farmer's operations are mechanized, the farmer must do his work when he can, depending upon natural factors. Consequently, the imposition of overtime requirements upon the farmer would not fulfill the purpose of the Act to induce employers to reduce hours of work and employ more men. See *Walling* v. *Youngerman Reynolds Hardwood Co.,* 325 U. S. 419, 423-424, and cases there cited. It would simply impose additional costs and other obligations upon the farmer without the beneficent results which Congress found would flow from the imposition of overtime requirements upon industry. Hence, Congress granted a complete exemption to all agriculture regardless of the mechanized character of the operation. The court below in its decision has ignored this Congressional purpose.

D. No court other than the court below has denied exemption to the activities in question.

The judicial decisions under the Fair Labor Standards Act fully support our position that the activities listed *supra,* pp. 2, 3, come within the agricultural exemption provided by the Act, and that it is irrelevant whether or not the farming operations are large or small, manual or mechanized. In addition to the cases cited on pages 4 and 7, *supra,* and those cited in the appellant's brief at pages 40-47, the court's attention is drawn to the following cases where the exemption was held applicable: *Jordan* v. *Stark Brothers Nurseries* (W.D. Ark. 1942), 6 Labor Cases ¶61,468 (employees of a nursery engaged in transporting trees from the fields where they were grown to a packing shed of the employer where they were sorted, graded, and tied into bunches for shipment); *Walling* v. *Craig,* 53 F. Supp. 479, 483 (D. Minn. 1943) (repair and reconditioning of bulldozers, tractors, and trucks devoted to agricultural activities); *Walling* v. *Peacock Corp.,* 58 F. Supp. 880, 883 (E. D. Wisc. 1943) (handling and milling of onion sets by the employees of an employer who grows the onion sets); *Redlands Foothill Groves* v. *Jacobs,* 30 F. Supp. 995, 1006 (S. D. Calif, 1940) (packing by farmer of fruit he grows himself or bottling by a farmer of honey gathered on his farm); *Dye* v. *McIntyre Floral Co.,* 176 Tenn. 527, 144 S. W. (2d) 752 (1940) (employees of a nursery, who receive, care for, and prepare for shipment nursery products grown by the nursery or purchased from others); *Belt* v. *Hodges,* (N. D. Tex., 1941) 4 Labor Cases ¶60,664 (employee working for a farm implement dealer trading farm implements for livestock).

E. The Administrator of the Wage and Hour Division has consistently held all of the activities in question to be exempt under section 13(a)(6).

1. Hauling of farm's products to a storage place or a processing plant located either on or off the farm or to any market.

(i) In *Interpretative Bulletin* No. 14, issued in August, 1939, 3 *C.C.H. Labor Law Reporter* (4th ed.) ¶24,488, the Administrator construing the agricultural exemption stated:

> "If a company has sugar cane fields and also a mill, the transportation of its own sugar cane to the mill seems an incidental practice which is included in this term" i.e. "practices * * * performed by a farmer * * * as an incident to or in conjunction with such farming operations". ¶10(f).

(ii) In an opinion letter written by him, the Administrator expressed the view that employees of an alfalfa grower, who haul the alfalfa grown by that grower to a processing plant located off the farm, are exempt under section 13(a) (6). WHMan. (1944-45) p. 594.

(iii) In paragraph 5(a) of *Bulletin* 14, the Administrator stated that the term "harvesting of any agricultural or horticultural commodities", as used in section 3(f), includes all "operations customarily performed in connection with the removal of the crops by the farmer from their growing position in the field, greenhouse, etc."

(iv) In paragraph 10(c) of the Bulletin, the Administrator stated as follows with respect to the term "delivery to storage" appearing in the definition of "agriculture":

> "The term 'delivery to storage' includes taking the commodities, dairy products, . . . to the places where they are to be stored or held pending preparation for or delivery to market".

(v) In paragraph 10(d) of the *Bulletin,* the Administrator stated as follows with respect to the term "delivery . . . to market" appearing in the definition of "agriculture":

> "The term 'delivery . . . to market' includes taking the commodities, dairy products . . . to market".

(vi) In paragraph 10(e) of the *Bulletin,* the Administrator stated as follows with respect to the term "delivery * * * to carriers for transportation to market" appearing in the definition of "agriculture":

> "The term 'delivery . . . to carriers for transportation to market' includes taking the commodities, dairy products . . . to a carrier—truck, railroad, ship, etc.—for transportation by such carrier to market".

(vii) In paragraph 10(f) of the *Bulletin,* the Administrator stated that besides the practices listed in the statute as being incident to or in conjunction with farming operations, there are other practices included within the exemption. As one such practice he mentioned the actual selling of the agricultural or horticultural commodities, etc.

All of the foregoing opinions relate to hauling and marketing activities performed by the farmer. The Administrator, however, has also recognized that if hauling activities are confined to a particular farm and consist of hauling on that farm the crops grown thereon to a storage place or processing plant located on that farm, the agricultural exemption also applies to such hauling activities. Thus in paragraph 11 of his *Bulletin* No. 14, he dealt with the term "practices . . . performed . . . on a farm as an incident to or in conjunction with such farming operations" appearing in the definition of "agriculture". He stated that with the exception of "delivery to market", which necessarily involves working off the farm, the practices described in paragraph 10 of his *Bulletin,* even if performed by employees of someone other than the farmer,

would be exempt so long as they were performed on the farm. And as we have already seen, among the practices he described in paragraph 10 of his *Bulletin* were those of hauling crops to a storage place, processing plant or a carrier for transportation to market.

2. Hauling by the farmer of necessary farm supplies and equipment from a nearby town to the farm.

In paragraph 10(f) of his *Bulletin* No. 14, the Administrator stated:

> "The truck drivers working for a farmer, who haul garbage and feed to the farm for feeding pigs, also perform practices that are exempt."

This example shows plainly that in the Administrator's view the hauling by the farmer's employees of agricultural supplies and equipment to the farm for use in the farming operations is exempt.

3. Operations functionally necessary to farming performed by the farmer or on the farm.

Included among such operations are the hauling of fertilizer, seed, other agricultural supplies and agricultural equipment from one part of the farm to another; repair and maintenance by the farmer or on the farm of the farmer's hauling facilities, including field roads on the farm; repair by the farmer or on the farm of farm machinery, equipment and implements; feeding and shoeing by the farmer or on the farm of horses and mules used in the farm operations; and maintenance and repair by the farmer or on the farm of farm buildings and grounds and tools and implements used in the farming operation.

In paragraph 12 of *Interpretative Bulletin* No. 14, the Administrator said as follows:

> "We have received inquiries concerning office help—secretaries, clerks, bookkeepers, etc.—night watchmen, maintenance workers, engineers, etc., who are employed by a farmer or on a farm in connection with the activities described in the definition of 'agriculture' contained in section 3(f). In our opinion such employees are exempt."

It is clear from this statement that the employees engaged in the above activities, all of which are not only performed in connection with the production and growing of agricultural commodities but are indispensable to such production and growing, are in the Administrator's opinion exempt.

In addition to the opinion expressed in paragraph 12 of his *Bulletin* No. 14, the Administrator and his attorneys have expressed other opinions showing that any activities performed by the farmer or on the farm in connection with the growing and marketing of the farm's crops are exempt. Thus they have held the following activities to come within the agricultural exemption.

(i) The erection of a silo on a farm by employees of an independent contractor. *Interpretative Bulletin* No. 14, par. 11.

(ii) The removal of stumps by employees of an independent contractor from cut over timber land owned by a lumber company and now devoted by the lumber company to the growing of tung trees, where such removal and the plowing and fertilizing of the ground around the tung trees was necessary to the proper growth of the trees. WHMan. (1944-45) p. 592.

(iii) Sorting, grading, sizing and other practices performed on tobacco on the farm where grown by a company in the business of buying, warehousing and marketing tobacco, to which the farmer sells his tobacco. WHMan. (1944-45) p. 593.

(iv) Work on the farm by field men of a cannery to

which the farmer had contracted to sell his crops, notwithstanding such field men from time to time report to the canning plant. 3 *C. C. H. Labor Law Reporter* (4th ed.) par. 25,242.203.

(v) Pre-cooling operations on the farm with respect to fruits and vegetables grown on the farm. 3 *C. C. H. Labor Law Reporter* (4th ed.) par. 25,242.21.

(vi) Logging operations performed by the farmer or on his farm with respect to timber blown down in a hurricane, which fallen timber presented a fire hazard and an impediment to the cultivation of the land. 3 *C. C. H. Labor Law Reporter* (4th ed.) par. 25,242.252.

(vii) Vining of peas grown on a farm by a vinery located thereon. 3 *C. C. H. Labor Law Reporter* (4th ed.) par. 25,242.281.

(viii) Tobacco stemming by a farmer or on a farm. 3 *C. C. H. Labor Law Reporter* (4th ed.) par. 25,242.344.

4. Preparation for market of products grown on the farm.

In paragraph 10(b) of *Bulletin* No. 14 the Administrator stated:

> "(b) The term 'preparation for market' must be treated differently with respect to various commodities. The following activities, among others, when performed by a farmer, seem to be included within the term:
>
> 1. Grain, seed, and forage crops.—Weighing, binning, stocking, cleaning, grading, shelling, sorting, packing and storing.
>
> 2. Fruits and vegetables.—Assembling, binning, ripening, cleaning, grading, sorting, drying, preserving, packing, storing, and canning.

3. Nuts (pecans, walnuts, peanuts, etc.).—Grading, cracking, shelling, cleaning, sorting, packing, and storing, unshelled nuts; and performing the same operations except cracking and shelling, upon the nut meats.

4. Sugar.—Manufacturing raw sugar, cane, or maple syrup and molasses.

5. Eggs.—Handling, cooling, grading, and packing.

6. Wool.—Grading and packing.

7. Dairy products.—Salting, printing, wrapping, packing, and storing butter; ripening, molding, wrapping, packing, and storing cheese; and canning or packing any other dairy product.

8. Cotton.—Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

9. Nursery stock.—Handling, wrapping, packaging, and grading.

10. Tobacco.—Handling, drying, bulking, stripping, tying, sorting, stemming, packing, and storing.

11. Livestock.—Handling and loading.

12. Poultry.—Culling, grading, cooping, and loading.

13. Honey.—Assembling, extracting, heating, ripening, removing comb, straining, cleaning, grading, weighing, blending, packing, and storing.

14. Fur.—Removing the pelt, scraping, drying, putting on boards and packing.''

5. American farmers have relied upon the interpretations of the Administrator in regarding their various farm activities as exempt.

According to a press release issued by the Administrator at the same time as Interpretative Bulletin No. 14, the Administrator's interpretations of the agricultural exemption in the Act were made only after lengthy conferences with representatives of employers, employees and

other interested parties. Authorities of the United States Department of Agriculture were also consulted. Much time was devoted by the Administrator's attorneys to a study of the legislative history of Section 13(a)(6). The Administrator also had his economists make economic studies in order to assist in a proper determination of the scope of the exemption. It was only after these lengthy investigations and discussions that the Administrator announced his opinions on the subject. Such opinions were widely circulated through *Interpretative Bulletin* No. 14, press releases and other releases to the various labor law publications.

Once the Administrator's interpretations were announced, the farmers of America relied upon such interpretations and were guided by them in compensating their employees. And such interpretations as above set forth were never modified. Since they comport with the language and spirit of the exemption provisions they should be accorded the respect which the Supreme Court has said are due the Administrator's interpretations. *United States* v. *American Trucking Ass'n. Inc.,* 310 U. S. 534, 549. As the Supreme Court has also said, employers may properly resort to such interpretations for guidance. *Skidmore* v. *Swift,* 323 U. S. 134, 140. They should not be lightly discarded, as was done by the court below, in favor of wholly new interpretations, of which the farmer never before heard.